

No. 337.
Brf. of Rouse & Grant for Appellee

FILED
DEC 4 1900
JAMES H. McKENNEY,

Filed Dec. 4, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 337.

CITY OF NEW ORLEANS, APPELLANT,

versus

ALPHONSE EMSHEIMER, APPELLEE.

Appeal from United States Circuit Court, Eastern District of Louisiana.

MOTION TO DISMISS APPEAL.

And now comes Alphonse Emsheimer, appellee, by Rouse & Grant, his solicitors, and moves the court to dismiss the appeal herein, for this to-wit:

Because, the decree appealed from was in favor of the appellant, and dismissed complainant's bill.

ARGUMENT IN SUPPORT OF THE MOTION.

The right of appeal is given to one who is aggrieved by the decree made; not to one who has obtained all the relief prayed for. The appellant complains of the *reasons* given by the court for its decree. But these reasons form no part of the decree. *Corning et al. vs. Troy Iron & Nail Factory*, 15 Howard, 465.

This court there said: "If the decree be correct, the party in whose favor it is given, has no right to complain; yet his appeal prays that it may be reversed and the appellants restored to all things which they have lost by reason thereof; and the record shows they have lost nothing.

"If the decree be reversed, according to the prayer of the appellants, the court must necessarily enter a decree for the complainants below. This would, probably, not meet the views of the appellants. They have put themselves in the anomalous position either of asking for the affirmance of the decree from which they have appealed, or requesting this court to reverse a decree in their favor, and send back the record to the court below, with directions to enter the very same decree, but to assign other reasons for it. The court were not bound to give any reasons for their decree. The law gives the party aggrieved an appeal from a final decree of an inferior court. But it does not give the party who is not aggrieved an appeal from a decree in his own favor because the judge has given no reasons, or recited insufficient ones for a judgment admitted by the appellant to be correct."

This appeal presents the precise case there dealt with by this court.

The demurrer raised two questions, first, was the case within the jurisdiction of the court *ratione persona;* second, was it within its equitable jurisdiction?

The court properly held that as between the parties it had jurisdiction, but dismissed the bill for want of equity. The complainants appealed to the Court of Appeals, where alone the ground upon which the decree was made can be reviewed. *Smith vs. McKay,* 161 U. S. R. 355.

Wherefore appellee prays, that this appeal be dismissed.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,
Solicitors.

November, 1900.